

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE INTEREST OF: S.F.M.D., PLAINTIFF; JUVENILE OFFICER,

Respondent

v.

F.D., (FATHER), and R.R. (MOTHER).

Appellant

DOCKET NUMBER WD78265 WITH WD78279, WD78333 AND WD78418

DATE: DECEMBER 22, 2015

Appeal From:

Circuit Court of Jackson County, MO
The Honorable John M. Torrence, Judge

Appellate Judges:

Division One
Anthony Rex Gabbert, P.J., Victor C. Howard, and Cynthia Martin, JJ.

Attorneys:

Darren Eugene Korte, Edward Moore, Kansas City, MO, Counsel for Respondent

Attorneys:

Aristotle Nikos Rodopoulos, (Attorney for Father), Meredyth Anne Vick, (Attorney for Mother),
Lisa Renee Robinett (Attorney and Guardian for S.F.M.D.) Kansas City, MO

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

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PLAINTIFF; JUVENILE OFFICER,**

Respondent,

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F.D., (FATHER), and R.R. (MOTHER),

Appellant.

**WD78265 WITH wd78279, wd78333 AND wd78418
Jackson County**

Before Division One Judges: Anthony Rex Gabbert, P.J., Victor C. Howard, and Cynthia Martin, JJ.

F.D. (Father) and R.R. (Mother) appeal the circuit court's judgment assuming jurisdiction over their minor child, S.F.M.D., concluding that S.F.M.D. was in need of care and treatment, and placing custody of S.F.M.D with the Children's Division.

AFFIRMED

Division One holds:

1. Father did not suffer due process violations when the trial court considered the Section 211.037 factors in its judgment and referenced the termination of parental rights statutes. The Juvenile Officer's petition gave Father notice of the allegations that led to the court's ultimate finding that the child was in need of care and treatment, and the court justifiably reviewed the Section 211.037 factors.
2. The trial court did not abuse its discretion or plainly err in admitting the petition for order of protection in Exhibit 1. The petition for order of protection was not admitted for use as direct substantive evidence against Father, and the petition was not the only evidence used by the court to conclude that the brass knuckle and punching incidents occurred. Further, Mother failed to prove that the trial court's credibility determination with regard to Mother's trial testimony and Exhibit 1 was against the weight of the evidence.
3. The trial court did not err in inferring by clear and convincing evidence that the child's rib fractures were caused non-accidentally on August 29, 2013, while the child was in the parents' custody, as expert medical testimony was not necessary in this case to pinpoint the exact day, the exact cause, or the exact perpetrator of the child's rib fractures to allow the court to reach these conclusions. Further, the evidence was not too speculative so as to deny the court substantial evidence from which it could make a finding that the child was non-accidentally injured on August 29, 2013.
4. Substantial evidence supported the trial court's conclusion that clear and convincing evidence showed that the child's injuries were non-accidental. Substantial evidence also

supported the court's conclusion that clear and convincing evidence showed that the child's serious non-accidental injuries occurred while the child was in the care and custody of the parents.

5. The trial court did not err in sustaining the allegations that Father and Mother abuse and/or neglect the child. The court articulated in its findings of fact and conclusions of law substantial evidence within the record to support the court's findings beyond that the child's injuries inexplicably occurred while in parental care and custody.

6. The trial court did not sustain the Juvenile Officer's allegation that parental actions placed the child at risk of further harm and neglect based upon "co-occurrence" percentages or data requiring expert medical proof as the parents contend but, rather, the court sustained the Juvenile Officer's allegation based on the specific evidence in this case regarding parental actions that placed the child at risk of further harm and neglect.

7. The trial court did not abuse its discretion in admitting evidence of Father's criminal conviction as it was logically and legally relevant to the Juvenile Officer's allegation that Father had a history of criminal action that impaired his parenting.

8. The trial court did not err in sustaining the Juvenile Officer's allegations, as pled by the Juvenile Officer, as substantial evidence supported the court's findings.

9. The trial court did not abuse its discretion in admitting evidence of a May 2014 incident of domestic violence. The evidence was logically and legally relevant to the Juvenile Officer's allegations that Father has a history of violence that impairs his parenting ability and that Father's and Mother's actions place the child at risk of further harm and neglect absent court intervention.

10. The parents are unable to prove that, even if the trial court erroneously rejected evidence regarding the results of a Children's Division investigation, the court's findings, conclusion, or disposition would have been different given its own findings in the case based upon the evidence before it.

11. The trial court did not err in considering Father's alcohol use when placing the child with the Children's Division as the court's concerns regarding Father's alcohol use were not speculative and were supported by substantial evidence.

Opinion by Anthony Rex Gabbert, Judge

Date: 12/22/15

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